but that its effect would be to simplify the task of the practising lawyer to an extraordinary degree must be plain to the most sceptical. Whether or not it is possible of realization, a step in the right direction could certainly be taken by the material shortening of judicial opinions. That this, at least, is not out of the question, seems clear. That it is desirable must be patent to any one who turns from a volume of English reports of the early part of this century to any recent volume of State reports.

"PICKETING" — INJUNCTIONS AGAINST STRIKERS. — Most of the public, outside of the trades unions, have a sufficient prejudice against anything that could be called "picketing" to approve without hesitation the sweeping injunction issued by the Supreme Court of Massachusetts in the recent case of *Vegelahn* v. *Gunter*, 44 N. E. Rep. 1077. And at the first reading the majority opinion seems to show sufficient grounds for the injunction. The more carefully, however, the dissenting opinions, especially that of Mr. Justice Holmes, are studied, the more doubtful the question becomes. The case was one of a now common sort, where workmen on strike maintain a patrol in front of the resisting employer's premises, with the object of intercepting other workmen who may come to take employment with him, and dissuading them from so doing. In this instance the patrol consisted of only two men, and if they were using any threats of violence, or inducing any breaches of existing contracts, such plainly illegal conduct was already under the injunction of the court. The question then before the Supreme Court was whether every sort of "picketing," and all attempts by the strikers to prevent men going into the plaintiff's employ, however peaceable the means used, should be enjoined as an unjustifiable infliction of damage to the plaintiff's business. The whole question turns, of course, on whether the infliction of the damage was justifiable. The majority of the court, without clearly separating the mere peaceable persuasion used by the defendants upon the other workmen from the intimidation supposed to be practised, held that the defendants' acts were not justified by their ultimate motive, that of securing better wages. They do not, however, distinguish clearly the cases where rivalry of interests in trade has been held to justify the intentional infliction of serious damage to business. Why the acts of the defendants in cases like *Mogul Steamship Co.* v. *McGregor*, [1892] A. C. 25, are within allowable competition, and the acts of the defendants in this case are not, is not made to appear very distinctly.

The truth is, as Mr. Justice Holmes points out in his opinion, and as he had before urged in an article in 8 HARVARD LAW REVIEW, 1, covering the very ground of this case, that the question of what sort of competition is allowable, or will furnish a justification for the intentional infliction of damage to business, is a mere question of public policy, which the most thorough knowledge of the law helps judges but little to decide. Nothing could be more apposite to this case than the following portions of the article just referred to: "The ground of decision really comes down to a proposition of policy of rather a delicate nature concerning the merit of a particular benefit to themselves intended by the defendants, and suggests a doubt whether judges with different economic sympathies might not decide such a case differently when brought face to face with the issue." As to which side the economic sympathies of the judges ought to incline towards, when they find such questions presented

to them for judicial legislation, there must unavoidably be two opinions. It would seem, however, that there is a serious discrepancy between the results reached in the cases of competition between rivals in the same trade, and the decisions in the cases where the struggle for economic advantage is between employers and employed. If cases such as *Mogul Steamship Co.* v. *McGregor*, *supra*, in England, and *Macauley* v. *Tierney*, 33 Atl. Rep. 1 (R. I.), and *Bowen* v. *Mattheson*, 14 Allen, 499, in this country, were decided according to the best public policy, as no one hitherto has denied, then in *Temperton* v. *Russell*, [1893] 1 Q. B. 715, *Flood* v. *Jackson*, [1895] 2 Q. B. 21, *Lyons* v. *Wilkins*, [1896] 1 Ch. 811, and finally this present case of *Vegelahn* v. *Gunter*, the courts have gone too far in the dangerous direction of interfering with the struggle of economic forces.

That the doctrine laid down in the recent English cases has by no means met with universal acceptance in that country, may be gathered from the sharp criticisms of *Flood* v. *Jackson* and *Lyons* v. *Wilkins*, which appeared at the time those cases were decided, in 12 Law Quarterly Review, 5–7, 201. It may be guessed that these criticisms were written by the learned editor of the Review, Sir Frederick Pollock, who has always opposed the extension of this class of actions. The very latest English authority, the second edition of Clerk & Lindsell on Torts, contains (pp. 14–25) the fullest treatment that has yet appeared of this whole class of cases, where "malice" or want of justifiable motive is made the foundation of liability; and in it the soundness of *Temperton* v. *Russell* and *Flood* v. *Jackson* is doubted (p. 22) on the ground of their inconsistency with *Mogul Steamship Co.* v. *McGregor*. In the Addenda, facing page 1, the case of *Lyons* v. *Wilkins* is noticed, and the suggestion made that it may be supported on the ground that persuasion by a picket necessarily involves some unlawful intimidation. The mere presence of a picket probably does in fact convey a covert threat of violence. For this reason the Massachusetts court may have practically reached a right result by enjoining the picketing altogether; but still Mr. Justice Holmes seems to have the advantage over the majority of the court in the discussion.

Protection of Minority Stockholders. — The jurisdiction of equity to protect minority stockholders from the fraudulent or oppressive acts of a majority in control is firmly established. Difficult questions are, however, continually arising, because frauds in corporate affairs are often perpetrated by the cleverest of men acting under the best of legal advice. The New York Court of Appeals has recently dealt a severe blow at a fraudulent game in *Farmers' Loan & Trust Co.* v. *N. Y. & Northern Ry. Co.*, 44 N. E. Rep. 1043. This was an action to foreclose a second mortgage, two minority stockholders being allowed to come in and defend. It was shown that the New York Central Railroad determined to secure the Northern's property, and accordingly purchased a majority of its stock, and over $2,000,000 of an issue of $3,500,000 second mortgage bonds. A scheme to lease the property was wisely abandoned when opposition on the part of minority stockholders was manifested. The terms of the second mortgage, however, were that in case of default, etc., the trustee "may, and upon the written request of the holders of $2,000,000 in amount of said bonds . . . shall apply to any court . . . for a foreclosure and sale." It appeared that in effect the trustee brought this suit